

CLARKSTON NUISANCE ABATEMENT ORDINANCE

Sec. 1. - Findings of the existence of nuisances.

(a) The city council of the city finds and declares that within the city limits of the city there is the existence or occupancy of dwellings or other buildings or structures which are unfit for human habitation or for commercial, industrial, or business occupancy or use and not in compliance with applicable state minimum standard codes as adopted by ordinance or operation of law or other applicable building, fire, life safety, or other codes relative to the safe use of real property and real property improvements adopted by ordinance in the city, or general nuisance law and which constitute a hazard to the health, safety, and welfare of the people of the city; and that a public necessity exists for the repair, closing or demolition of such dwellings, buildings, or structures.

(b) The city council of the city further finds and declares that within the limits of the city where there is in existence a condition or use of real estate which renders adjacent real estate unsafe or inimical to safe human habitation, such use is dangerous and injurious to the health, safety and welfare of the people of the city and a public necessity exists for the repair of such condition or the cessation of such use which renders the adjacent real estate unsafe or inimical to safe human habitation.

(c) The city council of the city further finds and declares that there exist within the limits of the city dwellings, buildings, or structures which are unfit for human habitation or for commercial, industrial, or business uses due to dilapidation and which are not in compliance with applicable codes; which have defects increasing the hazards of fire, accidents, or other calamities; which lack adequate ventilation, light, or sanitary facilities; or other conditions exist rendering such dwellings, buildings or structure unsafe or unsanitary, or dangerous or detrimental to the health, safety or welfare, or otherwise inimical to the welfare of the residents of the city; and

(d) The city council of the city further finds and declares that there exist within the limits of the city vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed, constituting an endangerment to the public health or safety as a result of

unsanitary or unsafe conditions to those persons residing or working in the vicinity of such dwellings, buildings and structures.

Sec. 2. - Continued use of other laws and ordinances.

It is the intent of the city council that nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of any local enabling act, charter, or ordinance or regulation, nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition to and supplemental to the powers conferred by any other law or ordinance, legislation, or regulation.

Sec. 3. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicable codes means:

- (1) Any optional housing or abatement standard provided in Chapter 2 of Title 8 of the Official Code of Georgia Annotated ("O.C.G.A.") as adopted by ordinance or operation of law, or general nuisance law, relative to the safe use of real property;
- (2) Any fire or life safety code as provided for in Chapter 2 of Title 25 of O.C.G.A.; and
- (3) Any building codes adopted by local ordinance prior to October 1, 1991, or the minimum standard codes provided in Chapter 2 of Title 8 of O.C.G.A. after October 1, 1991, provided that such building or minimum standard codes for real property improvements shall be deemed to mean those building or minimum standard codes in existence at the time such real property improvements were constructed unless otherwise provided by law.

Closing means causing a dwelling, building, or structure to be vacated and secured against unauthorized entry.

Drug crime means an act which is a violation of Article 2 of Chapter 13 of Title 16 of O.C.G.A., known as the Georgia Controlled Substances Act.

Dwellings, buildings, or structures means any building or structure or part thereof used and occupied for human habitation or commercial, industrial, or business uses, or intended to be so used, and includes any outhouses, improvements, and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design. The term dwellings, buildings or structures shall not mean or include any farm, any building or structure located on a farm, or any agricultural facility or other building or structure used for the production, growing, raising, harvesting, storage, or processing of crops, livestock, poultry, or other farm products.

Governing authority means the City Council of the City of Clarkston, Georgia.

Interested parties means:

- (1) Owner;
- (2) Those parties having an interest in the property as revealed by a certification of title to the property conducted in accordance with the title standards of the State Bar of Georgia, including every mortgagee of record;
- (3) Those parties having filed a notice in accordance with O.C.G.A. § 48-3-9;
- (4) Any other party having an interest in the property whose identity and address are reasonably ascertainable from the records of the petitioner of records maintained in the county courthouse or by the clerk of the court. Interested parties shall not include the holder of the benefit or burden of any easement or right of way whose interest is properly recorded, which interest shall remain unaffected; and
- (5) Persons in possession of said property and premises.

Owner means the holder of the title in fee simple.

Public authority means the city manager or the building official or their respective designees, and any officer of the City of Clarkston, DeKalb County, Georgia or the State of Georgia with responsibilities relating to health, fire, or building regulations or to other activities concerning dwellings, buildings or structures in the City of Clarkston, specifically including the DeKalb County Fire Marshal, the city police chief, and the city codes enforcement officers.

Public officer means the officer or officers who are authorized by O.C.G.A. §§ 41-2-7 through 41-2-17 and by this article to exercise the powers prescribed by this article or any agent of such officer or officers.

Repair means altering or improving a dwelling, building, or structure so as to bring the structure into compliance with all applicable codes and the cleaning or removal of debris, trash, and other materials present and accumulated, which create a health or safety hazard in or about any dwelling, building, or structure.

Resident means any person residing in the jurisdiction where the property is located on or after the date on which the alleged nuisance arose.

Sec. 4. - Duties of owners; appointment of public officer; procedures for determining premises to be unsafe or unhealthful.

(a) It is the duty of the owner of every dwelling, building or structure, or property within the city limits of the city to construct and maintain such dwelling, building, structure, or property in conformance with applicable codes in force within the city, or such ordinances that regulate and prohibit activities on property and that declare it to be a public nuisance to construct or maintain any dwelling, building, structure or property in violation of such codes or ordinances;

(b) The city manager, the building official, and each of their designees, are designated as public officer(s) to exercise the powers prescribed by this article;

(c) Whenever a request is filed with the public officer by a public authority or by at least five (5) residents of the city charging that any dwelling, building, or structure is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes, is vacant and being used in connection with the commission of drug crimes, or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer shall make an investigation or inspection of the specific dwelling, building or structure, or property. If the public officer's investigation or inspection identifies that any dwelling, building, structure or property is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer may direct the city attorney to issue a complaint in rem against the lot, tract or parcel of real property on which such dwelling, building, or structure is situated or where such

public health hazard or general nuisance exists, and shall cause summons and a copy of the complaint to be served on the interested parties for such dwelling, building or structure. The complaint shall identify the subject real property by appropriate street address and official tax map reference; identify the interested parties; state with particularity the factual basis for the action; and contain a statement of the action sought by the public officer to abate the alleged nuisance. The summons shall notify the interested parties that a hearing will be held before the Municipal Court of the City of Clarkston, Georgia, at a date and time certain and at a place within the city where the property is located. Such hearing shall be held not less than fifteen (15) days nor more than forty-five (45) days after the filing of said complaint in court. The interested parties shall have the right to file an answer to the complaint and to appear in person or by attorney and offer testimony at the time and place fixed for hearing;

(d) If after such notice and hearing, the court determines that the dwelling, building, or structure in question is unfit for human habitation or is unfit for its current commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the court shall state in writing findings of fact in support of such determination and shall issue and cause to be served upon the interested parties that have answered the complaint or appeared at the hearing an order:

(1) If the repair, alteration, or improvement of the said dwelling, building or structure can be made at a reasonable cost in relation to the present value of the dwelling, building or structure, then the order shall require the owner, within the time specified in the order, to repair, alter, or improve such dwelling, building or structure so as to bring it into full compliance with the applicable codes relevant to the cited violation and, if applicable, to secure the structure so that it cannot be used in connection with the commission of drug crimes; or

(2) If the repair, alteration, or improvement of the said dwelling, building or structure in order to bring it into full compliance with applicable codes relevant to the cited violations cannot be made at reasonable cost in relation to the present value of the dwelling, building or structure, then the order shall require the owner within the time specified in the order, to demolish and remove such dwelling, building or structure and all debris from the property.

For purpose of this article, the court shall make its determination of reasonable cost in relation to the present value of the dwelling, building or structure without consideration of the value of the land on which the structure is situated; provided, however, that costs of the preparation necessary to repair, alter, or improve a structure may be considered. Income and financial status of the owner shall not be a factor in the court's determination. The present value of the structure and the costs of repair, alteration, or improvement may be established by affidavits of real estate appraisers with a Georgia Appraiser Classification as provided in Chapter 39A of Title 41 of O.C.G.A., qualified building contractors, or qualified building inspectors without actual testimony presented. Costs of repair, alteration, or improvement of the structure shall be the cost necessary to bring the structure into compliance with the applicable codes relevant to the cited violations in force in the city.

(e) If the owner fails to comply with an order to repair or demolish the dwelling, building or structure, the public officer may cause such dwelling, building or structure to be repaired, altered, or improved, or to be vacated and closed or demolished. Such abatement action shall commence within two hundred seventy (270) days after the expiration of time specified in the order for abatement by the owner. Any time during which such abatement action is prohibited by a court order issued pursuant to O.C.G.A. § 41-2-13 or by any other equitable relief granted by a court of competent jurisdiction shall not be counted toward the two hundred seventy (270) days in which such abatement action must commence. The public officer shall cause to be posted on the main entrance of the building, dwelling, or structure a placard with the following words:

"This building is unfit for human habitation or commercial, industrial, or business use and does not comply with the applicable codes or has been ordered secured to prevent its use in connection with drug crimes or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions. The use or occupation of this building is prohibited and unlawful."

(f) If the public officer has the structure demolished, reasonable effort shall be made to salvage materials for credit against the cost of demolition. The proceeds of any moneys received from the sale of salvaged materials shall be used or applied against the cost of the demolition and removal of the structure, and proper records shall be kept showing application of sales proceeds. Any such sale of salvaged materials may be made without the necessity of public advertisement and bid. The public officer, the city commissioners of the city, and the city are relieved of any and all liability resulting from or occasioned by the sale of any such salvaged materials, including, without limitation, defects in such salvaged materials;

(g) The amount of the cost of demolition, including all court costs, appraisal fees, administrative costs incurred by the city manager, or his or her designee, and all other costs necessarily associated with the abatement action, including restoration to grade of the real property after demolition, shall be a lien against the real property upon which such cost was incurred.

Sec. 5. - Collection of lien.

(a) The lien provided for in paragraph (g) of section 4 shall attach to the real property upon the filing of a certified copy of the order requiring repair, closure or demolition in the office of the Clerk of Superior Court of DeKalb County and shall relate back to the date of the filing of the lis pendens notice required by section 12. The clerk of superior court shall record and index such certified copy of the order in the deed records of DeKalb County and enter the lien on the general execution docket. The lien shall be superior to all other liens on the property, except liens for taxes to which the lien shall be inferior, and shall continue in force until paid.

(b) Upon final determination of costs, fees, and expenses incurred in accordance with this section, the public officer responsible for enforcement actions in accordance with this section shall transmit to the city manager, or his or her designee, a statement of the total amount due and secured by said lien, together with copies of all notices provided to interested parties. The statement of the public officer shall be transmitted within ninety (90) days of completion of the repairs, demolition or closure. It shall be the duty of the city manager, or his or her designee, to collect the amount of the lien, using all methods available for collecting real property ad valorem taxes, including specifically Chapter 4 of Title 48 of O.C.G.A.; provided, however, that the limitation of O.C.G.A. § 48-4-78, which requires twelve (12) months of delinquency before commencing a tax foreclosure, shall not apply. The city manager, or his or her designee, shall remit the amount collected to the city council.

(c) Enforcement of liens pursuant to this section may be initiated at any time following receipt by the city manager, or his or her designee, of the final determination of costs in accordance with this section. The unpaid lien amount shall bear interest and penalties from and after the date of final determination of costs in the same amount as applicable to interest and penalties on unpaid real property ad valorem taxes. An enforcement proceeding pursuant to O.C.G.A. § 48-4-78 for delinquent ad valorem taxes may include all amounts due under this section.

(d) The redemption amount in any enforcement proceeding pursuant to this section shall be the full amount of the costs as finally determined in accordance with this section, together with interest, penalties, and costs incurred by the city manager, or his or her designee, in the enforcement of such lien. Redemption of property from the lien may be made in accordance with the provisions of O.C.G.A. §§ 48-4-80 and 48-4-81.

(e) The city council may waive and release any such lien imposed on property upon the owner of such property entering into a contract with the city, agreeing to a timetable for rehabilitation of the real property of the dwelling, building, or structure on the property and demonstrating the financial means to accomplish such rehabilitation.

Sec. 6. - Appeal.

Review of a court order requiring the repair, alteration, improvement or demolition of a dwelling, building or structure shall be by direct appeal to the superior court under O.C.G.A. § 5-3-29.

Sec. 7. - Other citations.

The public officers designated in subsection 4(b), and any designated agent of such officers, may issue citations to the owner, occupants, and/or persons in possession of the property and premises for violations of state minimum standard codes, optional building, fire, life safety, and other codes adopted by ordinance, and conditions creating a public health hazard or general nuisance, and may seek to enforce such citation in court of competent jurisdiction prior to issuing a complaint in rem as provided in this article. Any owner who fails to comply with any order issued pursuant to subsection 4(d) shall be guilty of a misdemeanor and, upon conviction, thereof shall be punished as provided by law. Any person removing the notice provided for in subsection 4(e) shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided by law.

Sec. 8. - No limitation of other nuisance abatement powers.

Nothing in this article shall be construed to impair or limit in any way the power of the city commissioners of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Sec. 9. - Determination by public officer that under existing ordinances dwellings, buildings, or structures are vacant and constitute conditions of nuisances.

The public officer may determine, under existing ordinances, that a dwelling, building, or structure is unfit for human habitation or is unfit for its current commercial, industrial, or business use if he/she finds that conditions exist in such building, dwelling, or structure that are dangerous or injurious to the health, safety, or morals of the occupants of such dwelling, building, or structure; of the occupants of neighborhood dwellings, buildings, or structures; or of other residents of the city. Such conditions include the following (without limiting the generality of the foregoing):

- (1) Defects therein increasing the hazards of fire, accidents or other calamities;
- (2) Lack of adequate ventilation, light or sanitary facilities;
- (3) Dilapidation;
- (4) Disrepair;
- (5) Structural defects; and
- (6) Uncleanliness.

The public officer may determine, under existing ordinances, that a dwelling, building or structure is vacant, dilapidated, and being used in connection with the commission of drug crimes based upon personal observation or report of a law enforcement agency and evidence of drug crimes being committed.

Sec. 10. - Powers of public officers.

The public officer(s) designated in this article shall have such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this article and O.C.G.A. §§ 41-2-7 through 41-2-17, including the following powers in addition to others granted in O.C.G.A. §§ 41-2-7 through 41-2-10 and §§ 41-2-12 through 41-2-17:

- (1) To investigate the dwelling conditions in the city in order to determine which dwellings, buildings or structures therein are unfit for human habitation or are unfit for current commercial, industrial or business use or are vacant, dilapidated, and being used in connection with the commission of drug crimes;
- (2) To enter upon premises for the purpose of making examinations; provided, however, that such entries shall be made in such a manner as to cause the least possible inconvenience to the persons in possession;
- (3) To appoint and fix the duties of such officers, agents, and employees as he or she deems necessary to carry out the purpose of the article; and
- (4) To delegate any of his or her functions and powers under the article to such officers and agents as he or she may designate.

Sec. 11. - Service of complaints.

- (a) Complaints filed pursuant to this article shall be served in the following manner. At least fourteen (14) days prior to the date of the hearing, the public officer shall mail copies of the complaint by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identities and addresses are reasonably ascertainable. Copies of the complaint shall also be mailed by first-class mail to the property address to the attention of the occupants of the property, if any, and shall be posted on the property within three (3) business days of filing the complaint and at least fourteen (14) days prior to the date of the hearing.
- (b) For interested parties whose mailing address is unknown, a notice stating the date, time and place of the hearing shall be published in the newspaper in which the sheriff's advertisements appear in DeKalb County once a week for two (2) consecutive weeks prior to the hearing.
- (c) Orders and other filings made subsequent to service of the initial complaint shall be served in the manner provided in this section on any interested party who answers the complaint or appears at the hearing. Any interested party who fails to answer or appear at the hearing shall be deemed to have waived all further notice in the proceedings.

Sec. 12. - Filing of lis pendens.

A notice of lis pendens shall be filed in the office of the Clerk of the Superior Court of DeKalb County at the time of filing the complaint. Such notice shall have the same force and effect as other lis pendens notices provided by law.